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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MONSTER ENERGY COMPANY,  
a Delaware corporation,

Plaintiff,

v.

JOF ENTERPRISE INC., a  
Massachusetts corporation; and  
JAMES FINNEY, an individual,

Defendants.

Case No. 5:22-cv-01458-AB-SP

**MONSTER ENERGY  
COMPANY'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO  
COMPEL DEFENDANTS TO  
PROVIDE RESPONSES TO  
INTERROGATORIES AND  
DOCUMENT REQUESTS**

HEARING:  
July 25, 2023  
10:00 a.m.  
Courtroom 4

Discovery Document: Referred to  
Magistrate Judge Sheri Pym

Fact Discovery Cutoff: July 28, 2023  
Pretrial Conference: February 9, 2024  
Trial: February 27, 2024

1 **I. INTRODUCTION**

2 Monster is the owner of the registered trademark UNLEASH THE  
3 BEAST!® and numerous other registered trademarks that include the word  
4 “BEAST.” Declaration of Jacob Rosenbaum (“Rosenbaum Decl.”), Ex. 5 ¶ 13.  
5 Monster uses these marks on a variety of goods, including energy drinks and,  
6 most notably for this case, t-shirts. *Id.* ¶ 21. Defendants are using the mark  
7 BOSTON BEAST to sell t-shirts. *Id.* ¶ 33. Monster alleges that Defendants’ use  
8 of the BOSTON BEAST mark is likely to cause confusion with Monster’s  
9 BEAST marks and therefore constitutes trademark infringement and unfair  
10 competition. *Id.* ¶¶ 42-66.

11 This motion arises out of Defendants’ failure to respond **at all** to Plaintiff’s  
12 Interrogatories and Requests for Production of Documents, which were served on  
13 March 6, 2023. Rosenbaum Decl., Ex. 2 at 17, Ex. 3 at 26. Responses to these  
14 requests were due on April 5, 2023. Fed. R. Civ. P. 33(b)(2); Fed. R. Civ. P.  
15 34(b)(2)(A). After Defendants failed to respond to Plaintiff’s discovery requests  
16 by the deadline, Plaintiff’s counsel emailed defense counsel, Phillip Horton, on  
17 April 13, 2023, to inquire as to the status of responses. Rosenbaum Decl., Ex. 1  
18 at 7. Defense counsel did not respond. *Id.* Plaintiff’s counsel again emailed  
19 defense counsel on April 18, 2023, explaining that due to Defendants’ failure to  
20 timely respond, Plaintiff understood any objections by Defendants to Plaintiff’s  
21 discovery requests to be waived. *Id.* at 6-7. Plaintiff’s counsel also requested  
22 defense counsel’s availability to meet and confer. *Id.*

23 Defense counsel responded on April 26, 2023, to explain that Defendants  
24 were unavailable and requested a thirty-day extension to respond to Plaintiff’s  
25 discovery requests. *Id.* at 6. On April 28, 2023, Plaintiff responded that due to  
26 defense counsel’s failure to earlier request an extension and the fact that responses  
27 were already more than three weeks past due, Plaintiff was unwilling to alter its  
28 position that all objections had been waived or to grant a retroactive extension of

1 time. *Id.* at 5-6. In the same email, Plaintiff notified Defendants that it would  
2 move to compel discovery responses if written responses were not received by  
3 the end of the following week. *Id.* That same day, defense counsel responded,  
4 explaining that Defendants understood Plaintiff's position, but that with  
5 additional time, he hoped to be in contact with Defendants and would work on  
6 responding to Plaintiff's discovery requests "ASAP free of objections." *Id.* at 5.

7 On May 1, 2023, Plaintiff's counsel notified defense counsel that if  
8 Plaintiff did not receive a response by May 11, 2023, it would begin the motion  
9 to compel process. *Id.* That same day, defense counsel responded that he  
10 understood. *Id.* at 4.

11 On May 24, 2023, Plaintiff's counsel emailed defense counsel explaining  
12 that Plaintiff required Defendants' discovery responses and documents in advance  
13 of the deposition of JOF Enterprise, Inc., which was then noticed for June 15,  
14 2023. *Id.* Plaintiff's counsel again requested defense counsel's availability for a  
15 meet and confer and warned that defense counsel's failure to provide his  
16 availability would result in Plaintiff's filing a motion to compel. *Id.* That same  
17 day, defense counsel emailed Plaintiff's counsel to discuss a non-discovery  
18 matter. *Id.* at 3. On May 25, 2023, Plaintiff again requested defense counsel's  
19 availability for a meet and confer. *Id.* at 3. The parties met and conferred on May  
20 31, 2023. Rosenbaum Decl. ¶ 7.

21 During the parties' meet and confer, Defendants' counsel could not commit  
22 to a date by which responses would be provided. Rosenbaum Decl. ¶ 8. To date,  
23 Defendants have not provided any responses to Plaintiff's Interrogatories or  
24 Requests for Production of Documents. *Id.* at ¶ 9. Recognizing that the instant  
25 Motion to Compel was necessary, Plaintiff prepared its portion of the Joint  
26 Stipulation in connection with the Motion to Compel and provided it to  
27 Defendants on June 21, 2023. Rosenbaum Decl., Ex. 6. Despite being reminded  
28 by Plaintiff's counsel that Defendants' deadline to provide their portion of the

1 Joint Stipulation was approaching, Defendants failed to provide their portion of  
2 the Joint Stipulation. Rosenbaum Decl., ¶¶ 12-14, Ex. 7 at 93. As a result of  
3 Defendants' non-responsiveness, Plaintiff has been completely unable to conduct  
4 discovery and also has been unable to submit a Joint Stipulation in support of this  
5 motion. Plaintiff now moves to compel Defendants' responses under Local Rule  
6 37-2.4.

7 **A. Discovery at Issue**

8 Plaintiff served Defendants with 11 Interrogatories and 25 Requests for  
9 Production on March 6, 2023. Rosenbaum Decl., Ex. 2 at 17, Ex. 3 at 26.  
10 Responses to these requests were due on April 5, 2023. Fed. R. Civ. P. 33(b)(2);  
11 Fed. R. Civ. P. 34(b)(2)(A). Defendants' failure to provide responses has  
12 prevented Plaintiff from conducting any discovery in this matter.

13 **B. This Court Should Compel Defendants to Respond to the**  
14 **Unanswered Discovery Without Objections**

15 Under Rule 33(b) of the Federal Rules of Civil Procedure, "[t]he  
16 responding party must serve its answers and any objections within 30 days after  
17 being served with the interrogatories." Fed. R. Civ. P. 33(b)(2). Under Rule  
18 34(b) of the Federal Rules of Civil Procedure, "[t]he party to whom the request is  
19 directed must respond in writing within 30 days after being served." Fed. R. Civ.  
20 P. 34(b)(2)(A). Here, Plaintiff served its Interrogatories and Requests for  
21 Production on Defendants on March 6, 2023. Rosenbaum Decl., Ex. 2 at 17, Ex.  
22 3 at 26. Defendants' responses to Plaintiff's Interrogatories and Requests for  
23 Production were due on April 5, 2023. Fed. R. Civ. P. 33(b)(2); Fed. R. Civ. P.  
24 34(b)(2)(A). Defendants did not serve responses on or before April 5, 2023, nor  
25 did they request an extension in advance of the deadline. Defendants did not  
26 request an extension until April 26, 2023, three weeks past the deadline to  
27 respond, and after Plaintiff demanded responses. Rosenbaum Decl., Ex. 1 at 6.  
28 Plaintiff's counsel did not agree to defense counsel's request. *Id.*

1           Instead, Plaintiff’s counsel repeatedly warned that a motion to compel  
2           would be forthcoming if responses were not promptly received. *Id.* at 4-6.  
3           Plaintiff’s counsel also explained that the requested discovery responses were  
4           required in advance of the deposition of JOF Enterprise, Inc. *Id.* at 4. To date,  
5           Defendants have not provided any responses to Plaintiff’s Interrogatories or  
6           Requests for Production of Documents. Rosenbaum Decl. ¶ 9.

7           “[B]y failing to timely respond to [Plaintiff’s] interrogatories, [Defendants]  
8           ha[ve] waived [their] right to object to them and must now respond without  
9           objection.” *Simplicity Int’l v. Genlabs Corp.*, No CV 09-6146-SVW(RC), 2010  
10          U.S. Dist. LEXIS 148389 at \*5 (C.D. Cal. Mar 15, 2010) (citing *Richmark Corp.*  
11          *v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992); *Young v.*  
12          *United States*, 149 F.R.D. 199, 206 (S.D. Cal. 1993)). Accordingly, Plaintiff  
13          moves for an order compelling Defendants to respond to Plaintiff’s  
14          Interrogatories “without delay” and “without objection.” *See id.* at \*5-6.

15          “Failure to object to requests for production of documents within the time  
16          required [by Rule 34] constitutes a waiver of any objection.” *Rodriguez v.*  
17          *Gregory Funding, LLC*, No. EDCV 21-1703-JGB (KKx), 2022 U.S. Dist. LEXIS  
18          200915 at \*6 (C.D. Cal. Nov. 3, 2022) (citing *Richmark Corp. v. Timber Falling*  
19          *Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992)). Accordingly, Plaintiff moves  
20          for an order compelling Defendants to respond to Plaintiff’s Requests for  
21          Production without delay and “without objections.” *See id.*

22          **C.     This Court Should Award Monster its Attorneys’ Fees in Connection**  
23          **with this Motion**

24          Federal Rule of Civil Procedure 37(a) requires that if a motion compelling  
25          discovery is granted—“or if the disclosure or requested discovery is provided  
26          after the motion was filed—the court must, after giving an opportunity to be  
27          heard, require the party or deponent whose conduct necessitated the motion, the  
28          party or attorney advising that conduct, or both to pay the movant’s reasonable

1 expenses incurred in making the motion, including attorney's fees." Fed. R. Civ.  
2 P. 37(a)(5)(A). "But, the court must not order this payment if: (i) the movant filed  
3 the motion before attempting in good faith to obtain the disclosure or discovery  
4 without court action; (ii) the opposing party's nondisclosure, response, or  
5 objection was substantially justified; or (iii) other circumstances make an award  
6 of expenses unjust." Fed. R. Civ. P. 37(a)(5)(A)(i)-(iii).

7 Plaintiff made several good faith attempts to obtain the requested discovery  
8 without court action. Rosenbaum Decl., Ex. 1 at 4-7, ¶¶ 7-14. These attempts  
9 were unsuccessful. *Id.* Defendants have similarly frustrated Plaintiff's attempts  
10 to file a fully compliant Joint Stipulation under Local Rule 37-2. Rosenbaum  
11 Decl., ¶¶ 11-15, Ex. 7. Neither Defendants' nondisclosure nor their failure to  
12 meaningfully participate in the Joint Stipulation process were substantially  
13 justified. No substantial justification can exist for completely failing to respond  
14 to discovery for several months or for entirely ignoring the Joint Stipulation  
15 process. Moreover, Defendants' conduct has denied Plaintiff the opportunity to  
16 conduct any written discovery in this matter, or to take the deposition of JOF  
17 Enterprise, Inc., for which written discovery is required. *See* Rosenbaum Decl.,  
18 Ex. 1 at 4. Nor do any other circumstances known to Plaintiff make an award of  
19 expenses unjust. Therefore, Plaintiff requests monetary sanctions equal to the  
20 "reasonable expenses incurred in making the motion, including attorney's fees."  
21 Fed. R. Civ. P. 37(a)(5)(A). Plaintiff respectfully requests that the Court set a  
22 schedule for Plaintiff to submit evidence of the attorneys' fees incurred on this  
23 motion.

24 KNOBBE, MARTENS, OLSON & BEAR, LLP

25 Dated: July 3, 2023

By: /s/ Jacob R. Rosenbaum

26 Steven J. Nataupsky

27 Lynda J. Zadra-Symes

28 Paul A. Stewart

Jacob R. Rosenbaum

Attorneys for Plaintiff,  
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